

COMMITTEE FOR PUBLIC COUNSEL SERVICES

PERFORMANCE STANDARDS

GOVERNING THE REPRESENTATION OF INDIGENT PERSONS IN “SEX OFFENDER REGISTRY” PROCEEDINGS

These guidelines are intended for use by the Committee for Public Counsel Services in evaluating, supervising and training counsel assigned pursuant to G.L. c. 211D. Counsel assigned pursuant to G.L. c. 211D must comply with these guidelines and the Massachusetts Rules of Professional Conduct. In evaluating the performance or conduct of counsel, the Committee for Public Counsel Services will apply these guidelines and the Massachusetts Rules of Professional Conduct, as well as all CPCS policies and procedures included in this manual and other CPCS publications.

Assigned counsel should note that these guidelines refer to, and assume that counsel is familiar with, the MCLE training materials, *Defending the Accused: Sex Offender Registration and Notification*, vols. 1 and 2, which are provided to counsel as part of the certification training. Many pleadings mentioned in these standards are contained in the training materials.

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1. GENERAL PRINCIPLES OF REPRESENTATION

1.1 [The Role of Counsel](#)

Counsel's goal in representing a client in a matter pertaining to the Sex Offender Registration and Notification Act, G.L. c. 6, §§ 178C-P, is to try to obtain a ruling that the client does not have to register under the Act, or that he is not subject to the notification provisions of the act, or at least that the client receives the lowest risk level classification possible. Counsel's goal is also to preserve all of the client's constitutional and other challenges to the Act so that the client may receive the benefit of any future favorable opinions from appellate courts.

1.2 [Education, Training and Experience of Defense Counsel](#)

Counsel should familiarize himself with the Act, with the Sex Offender Registry Board (SORB) regulations, and with the Massachusetts case law on the subject of the sex offender registry. Counsel should familiarize herself with the Rules of Civil Procedure and the Superior Court Rules which apply to superior court civil actions challenging the SORB's risk level classification.

1.3 General Duties of Counsel

The following General Duties of Defense Counsel from the Criminal Performance Guidelines are incorporated by reference: 1.3(a), (c), (d), (e), (h), (j), (l), and (n).

2. PRELIMINARY PROCEEDINGS & PREPARATION

2.1 Receipt of Assignment Letter

- a. Upon receipt of an assignment letter, counsel should immediately file a notice of appearance with the SORB.
- b. If counsel receives an assignment letter and cannot accept the assignment, she must contact CPCS by telephone, fax, or letter within two business days.
- c. Once counsel receives an assignment letter from CPCS in a SORB case, counsel must make every effort to speak with the client within three business days. This initial contact may be by telephone. Counsel should explain to the client the SORB classification and hearing procedure, and should inform the client that counsel will meet with the client in person as soon as she has received discovery materials from the SORB and reviewed them.
- d. After counsel has spoken to the client, counsel should contact the SORB to schedule a hearing date and to arrange for the SORB to send her discovery materials. Experienced counsel may delay scheduling a hearing date if, in the circumstances of the case, counsel determines that this delay would benefit the client by allowing additional time for counsel to have the client evaluated by an expert, to have the client begin treatment, or to otherwise prepare the case. Inexperienced counsel should consult with a mentor before delaying the scheduling of a hearing date. Counsel should make every effort to ascertain the client's schedule before scheduling a hearing date with the SORB.

2.2 Contacting the Client

- a. Counsel must make every effort to speak with the client, in person or by telephone, within three business days of being assigned.
- b. Counsel must arrange for consultation with the client, in person, in an appropriate and private setting, within ten business days of receiving the assignment letter from CPCS. Counsel should be aware that it is a criminal offense for the client to reside, work, or attend a post-secondary educational institution at an address other than the addresses at which the client has registered, and advise the client accordingly.
- c. If at any time during representation of the client, counsel's ability to prepare the case is substantially affected by his inability to contact the client, counsel must contact the CPCS SORB litigation attorney for advice.
- d. At the initial meeting, counsel should carefully question the client about his prior criminal record, and determine whether the client has been convicted of one of the sex offenses designated in § 178C of the Act. Once counsel has obtained the client's CORI in the initial discovery packet from SORB, counsel should verify that the information

obtained from the client is accurate. In the event that the client has erroneously registered as an offender, counsel must contact the SORB and take steps to remove the client's name from the registry.

- e. Counsel should discuss with the client the client's conviction(s) for sex offenses and determine whether it is possible to mount a collateral attack on the conviction(s), in order to relieve the client of the duty to register. If a collateral attack seems appropriate, counsel must contact the SORB Assignment Coordinator at CPCS about either obtaining assistance in collaterally attacking the conviction or having this issue assigned to other counsel.
- f. At the initial interview, counsel should ask the client in detail about each of the factors enumerated in 803 CMR 1.40, as well as details regarding the client's current lifestyle, education, employment, and any other indicators of a stable lifestyle. Counsel should inquire about any physical condition the client may have which would make it less likely that he would commit a sex offense.
- g. Counsel should identify employment, education, treatment, medical, or other records that may be helpful to the client at the hearing, and obtain from the client the releases necessary for counsel to obtain the records. Counsel should obtain releases that will permit him to view and copy materials from the files of the attorneys who represented the client on the underlying sex offense convictions.
- h. Counsel should, with the client's help, identify any available witnesses whose testimony may be helpful to the client at the hearing.

2.3 Obtaining Materials from the SORB

- a. Counsel should make personal contact with the SORB attorney assigned to the client's case within 5 business days of receiving the Notice of Hearing. Counsel should request that any discovery materials be forwarded to her as soon as they become available.
- b. Counsel should expect to receive at least two sets of discovery materials from the SORB: the first at the time she receives the Notice of Hearing; and the second approximately 4 to 6 weeks before the scheduled hearing date. Counsel should contact the SORB attorney if these materials are not received in a timely manner and, if necessary, file motions asking the hearing examiner to order their production.
- c. Within one week of receipt of the initial discovery packet, counsel should review the criminal record information contained in that packet, telephone the clerks' offices for the courts where the client has sex offense convictions, and determine who represented the client in each case. Counsel should then, where possible, contact each attorney to review the case file and discuss the details of the case with the attorney. Counsel should arrange to obtain copies of any pertinent documents from each attorney.

2.4 Investigation and Preparation for the Hearing

- a. For each fact favorable to the client that counsel has identified through interviewing the client and reviewing the records, counsel should determine how this information can be placed before the hearing examiner.
- b. Counsel should interview all persons who are potential witnesses at the hearing.

- c. Counsel must attempt to contact any current or recent sex offender treatment provider of the client, to determine if that person is available (and useful) as a witness at the hearing.
- d. Counsel should obtain copies of all available treatment records of the client.
- e. If the client is currently on probation or parole, or has recently completed probation or parole, Counsel should contact the probation or parole officer, interview him to the extent possible, and determine whether that person would make a good witness, would be willing to testify, or would be willing to submit a letter or affidavit on the client's behalf.
- f. Counsel should consider documenting the client's current living situation using documents (such as rent or utility receipts), photographs, affidavits (e.g. from a landlord), and/or live testimony.
- g. Counsel should obtain supportive letters on behalf of the client from community members, friends, and colleagues.
- h. Counsel should obtain copies of any awards, educational certificates, certificates of program completion (e.g. substance abuse, anger management), job evaluations or other documents that reflect well on the client.
- i. Counsel should obtain all information on client's prior sex offender treatment, including any evaluations, progress reports, therapist's letters, and relapse prevention plan.
- j. Counsel should review all SORB-provided discovery with the client, and investigate any discrepancies between the SORB materials and information counsel has received from other sources.
- k. If the SORB's discovery materials are inaccurate (for instance, if the police report provided by SORB does not reflect the actual facts of the case, or the facts to which the client pled guilty), counsel should first bring any errors to the attention of the SORB attorney, and see if they will agree to a stipulation to the correct set of facts. If counsel cannot obtain a stipulation, she must obtain admissible testimonial or documentary evidence to refute the inaccurate information.
- l. If the client is not currently in a treatment program, counsel should discuss with the client the advisability of the client entering treatment prior to the hearing.
- m. If the client does not have a Relapse Prevention Plan, counsel should encourage client to create one, either on his own or with the help of a treatment provider.

2.5 Expert Issues

- a. Counsel should file a pre-hearing motion requesting funds for an expert to evaluate the client and to possibly testify at the SORB hearing, stating, at a minimum, the following grounds: that the funds are necessary for the attorney to effectively represent the sex offender; and that the funds are necessary to adequately address SORB's claims of likelihood of reoffense. Counsel should preserve the client's rights with respect to the

denial of this, and any other, pre-hearing motion by ensuring that the motion is part of the record, and by objecting on the record to the denial of the motion.

b. Counsel should obtain copies of all sex offender evaluations done of the client in the past. For any recent, favorable evaluations, counsel should contact the evaluator and determine whether he would be willing to testify at the client's hearing, and what his fee would be. Counsel should file a motion for funds for an expert, as described in 2.5(a), unless the client or his family has resources sufficient to pay the expert.

c. Counsel must familiarize herself with the SORB regulations limiting the use of expert reports and testimony (803 CMR 1.18(6) and Prehearing Orders 8/31/02 and 2/14/03), and explore ways of introducing expert reports and testimony within these constraints.

d. For favorable expert reports or documents that may not be admitted in evidence at the SORB hearing, counsel should nonetheless provide copies to the SORB as part of the reciprocal discovery process, and be prepared at the hearing with copies of these documents. Counsel should move to introduce the documents during the client's case, and if that motion is denied, have the documents marked for identification.

e. Counsel should discuss with the client the potential waiver of privilege that will result from an expert testifying on the client's behalf.

f. Counsel should attempt to get a letter in support of the client from any current or recent therapist.

2.6 Filing and Obtaining Rulings on Pre-hearing Motions

a. Counsel should familiarize herself with the sample pre-hearing motions in the training materials, and file any motions that are appropriate as soon as possible, but in any event no later than 10 business days prior to the hearing. Counsel should ensure that both the assigned hearing examiner and the SORB attorney who has been assigned the case receive copies of these motions. All motions must be accompanied by a supporting affidavit.

b. Counsel should determine which issues in the case require decision prior to the hearing, and move pre-hearing for rulings on those motions. Counsel should send copies of the motions to the SORB attorney, and directly to the hearing examiner's attention at the SORB. Counsel should follow up with a telephone call to SORB to verify that the hearing examiner has received copies of the motions.

c. If the client does not speak English, counsel must first notify SORB that an interpreter will be needed at the hearing. Counsel must then file a pre-hearing motion for funds for an interpreter with the SORB. If the SORB denies this motion, counsel must immediately contact the CPCS SORB Assignment Coordinator for help in filing an application for relief before a single justice of the SJC pursuant to G.L. c. 211, § 3.

d. Counsel must file a separate pre-hearing motion indicating with specificity which motions counsel wants rulings on prior to the hearing, and moving for such rulings within a requested time frame.

e. In every case, counsel must file a motion that the client be relieved from the obligation to register pursuant to 803 CMR 1.37A. If the client's convictions of sex offenses make him ineligible under the regulations, counsel must nonetheless file such a

motion, arguing that the limitations laid out in the regulations are unconstitutional. Counsel should refer to the training materials for sample motions.

f. Counsel should ascertain as early as possible whether all necessary witnesses will be available on the hearing date. If a necessary witness is unavailable, counsel should move for a continuance under 803 CMR 1.12, and attach a detailed affidavit showing good cause for the requested continuance.

g. Counsel should never assume that a request for continuance will be granted. Counsel should explore alternative ways of introducing the evidence that would have been elicited from an unavailable witness.

2.7 Identifying and Summoning Witnesses and Documents

a. Counsel should identify, well in advance of trial, those witnesses and/or documents that she will need to summons.

b. Counsel must submit to the hearing examiner, in writing, at least 21 days prior to the hearing, requests for subpoenas of witnesses and documents.

c. Counsel should subpoena any probation or parole officer whose testimony is needed at the hearing.

2.8 Reciprocal Discovery Obligations

a. Counsel must comply with all reciprocal discovery obligations as described in 803 CMR 1.18, and Prehearing Orders 8/31/02 and 2/14/03.

b. Counsel must provide to the SORB, at least 10 days prior to the hearing, a copy of any documents that counsel intends to introduce at the hearing, a complete witness list, notice of expert testimony including the expert's report or a summary of the expert's findings, and any outstanding substantive motions. 803 CMR 1.18

III. THE REGISTRY BOARD HEARING

3.1 The Client's Right to a Hearing

Under no circumstances may counsel waive the client's right to a hearing before the SORB without first discussing this option in detail with the CPCS SORB litigation attorney.

3.2 Obtaining Rulings on Pre-hearing Motions

a. Counsel must make a record, at the hearing, of any pre-hearing motions that have been filed by referring to each motion, verifying that it is part of the record, and ensuring that it has been ruled upon. At the hearing, counsel should place objections on the record for each motion that has been denied, stating the basis for the objection and, where appropriate, the way in which the client has been harmed by denial of the motion. Where appropriate, counsel should make an offer of proof as to any excluded evidence.

b. Counsel should move for reconsideration of any motions which the hearing examiner has denied prior to the hearing.

3.3 Opening Statement

Counsel should summarize for the hearing examiner the evidence that she expects to present, and the implications of that evidence for the client's sex offender classification.

3.4 The SORB's Case in Chief

a. For every witness on the SORB's witness list (if any), Counsel should be prepared to cross-examine the witness. Counsel should look for: positive facts which this witness can testify to; any errors or overstatements in the witness' testimony; any omission of positive facts about the client in the witness' testimony or written reports; and any inconsistencies in the witness' testimony or written submissions.

b. For every document introduced by the SORB, either directly or through a witness, Counsel should be prepared to object to admission and move to strike all or parts of the document based on issues of privilege, relevance, reliability, or other appropriate grounds.

3.5 Putting on a Defense

a. Counsel should prepare each of her witnesses in advance of the hearing. Counsel should review with the witness the anticipated direct examination, likely areas of cross-examination, and appropriate dress and demeanor for the hearing. Witnesses should be made aware of the details of the client's offense(s) when preparing them for cross-examination.

b. Counsel should be prepared to introduce into evidence all documents helpful to the client's position. To the extent possible, these documents should be introduced in the context of the testimony of a witness who can explain what each document is and why it is important.

c. Counsel should, well in advance of the hearing, discuss with the client the advisability of the client testifying. Counsel must advise the client that there is a possibility (however small) that the SORB will call the client to the stand. Counsel must prepare each client to testify at the hearing, regardless of the decision made prior to the hearing as to whether or not Counsel will be calling the client to the stand.

d. Counsel should put into evidence any scholarly articles that are helpful to the client; counsel should pay particular attention to articles which contradict the SORB's regulatory factors, 803 CMR 1.40, where such factors are damaging to the client.

e. Any expert reports, documents, or testimony that are excluded at the hearing should be marked for identification. Counsel should object to their exclusion from admission on due process, right to a fair hearing, and any other appropriate grounds.

f. If evidence comes in through the SORB's case that the client is denying or has in the past denied guilt for the sex offenses, counsel should introduce scholarly articles indicating that denial of guilt is not related to an increase in recidivism (see, e.g., *Sexual Offender Recidivism Risk: What We Know and What We Need to Know*, Hanson, Morton, & Harris; in the training materials). Counsel should, as a general rule, not call a client to testify if he is going to deny guilt for the offenses.

3.6 Closing Statement

- a. Counsel should give a closing statement persuasively summarizing the evidence that points to a low risk of reoffense for her client. Counsel should anticipate and respond to SORB's arguments regarding those factors that might point to her client having a higher risk of reoffense.
- b. Counsel should be familiar with, and refer to, the regulatory factors listed in 803 CMR 1.40 when making a closing statement.
- c. Counsel should be familiar with, and refer to, articles on sex offender recidivism that contradict the regulatory factors, where such factors are unhelpful to the client.

3.7 Motion for Delayed Dissemination or Immediate Notice of Decision

At the close of the hearing, counsel should move orally and in writing that she be immediately informed by telephone or fax of the SORB's classification decision, and that the SORB not begin dissemination until three business days after the decision. If this is denied, Counsel should do everything possible to obtain a ruling that will give her access to the SORB's decision at the earliest possible moment.

3.8 Proposed Findings of Fact and Rulings of Law

At the close of the hearing, counsel should request permission to file proposed findings of fact and rulings of law, and a memorandum in support thereof. Counsel should request sufficient time to prepare a detailed, fact-specific document. Counsel should familiarize herself with the sample request and memorandum in the training materials.

IV. SUPERIOR COURT REVIEW OF THE HEARING EXAMINER'S DECISION

4.1 Preparing for the Appeal

- a. Because counsel will only have a short time to file the superior court appeal after the hearing examiner's decision (two days if the client is seeking a restraining order, and thirty days otherwise), counsel must begin to prepare for the superior court appeal prior to the issuance of the hearing examiner's decision.
- b. Counsel must discuss with her client, well in advance of the hearing examiner's decision, the range of possible decisions the hearing examiner may reach, and which of these decisions the client would want to appeal. Counsel should also discuss whether the client wants to seek a stay of registration and/or dissemination if the hearing examiner's decision is adverse to the client. Except in extraordinary circumstances, counsel should advise a client who has been classified as a level 3 after a board hearing to appeal the classification decision and to seek a stay of registration and dissemination. In general, counsel should advise a client to appeal a level 2 classification if that does not represent a reduction in the preliminary classification given to the client by SORB. For a client who has chosen to appeal a level 2 classification, counsel should, except in extraordinary circumstances, advise the client to seek a stay of registration and dissemination.
- c. If the client, after consultation with counsel, has decided to seek a stay of an adverse decision of the hearing examiner, counsel must be prepared to file quickly the

superior court papers. Counsel must prepare in advance as much of the each of the following documents as is feasible:

1. Motion to Proceed in Forma Pauperis
 2. Affidavit of Indigency
 3. Motion to Proceed under a Pseudonym and Affidavit
 4. Motion to Impound
 5. Complaint for Judicial Review
 6. Motion for Stay of Registration and Dissemination Pending Appeal
 7. Memorandum in Support of Motion for Stay
- d. The Complaint for Judicial Review must state all possible grounds upon which an appeal may be based (see the sample Complaint in the training materials).
- e. Counsel and the client should decide in advance which superior court the appeal will be filed in.
- f. Counsel should make every effort to maintain client contact information that will allow her to quickly reach her client once the hearing examiner issues a decision.

4.2 Filing the Initial Papers

- a. As soon as counsel receives the SORB's decision, she must inform her client and consult with the client about whether an appeal should be sought.
- b. If the client wants to appeal the SORB's decision **and** pursue a stay of registration and/or dissemination, counsel must:
1. file a notice of appeal with the SORB;
 2. file a request for transcript with the SORB pursuant to 803 CMR 1.24;
 3. immediately finish preparing the papers listed in 4.1(c), above;
 4. arrange to meet the client as soon as possible in the superior court in order to file these papers and to have the client sign an affidavit of indigency.
 5. file the papers listed in 4.1(c) above, and request an immediate *ex parte* hearing on the Motion for Stay (seeking a temporary stay until the motion can be heard with a SORB representative present), the Motion to Proceed in Forma Pauperis, and the Motion to Impound.
 6. argue these motions immediately before a judge.
 7. schedule a date for hearing on the Motion for Stay of Registration and Dissemination at which the SORB attorney will be present.
- c. Unless counsel has secured an agreement from SORB to defer dissemination for a period of time after the issuance of the hearing examiner decision, counsel must make every effort to have a motion for temporary stay of registration and dissemination heard within two days of the issuance of the SORB decision. Failure to do this may result in dissemination occurring before counsel has the opportunity to be heard on the motion for stay.
- d. Where the client does **not** want to pursue a stay of registration and/or dissemination, counsel must, within 30 days of issuance of the hearing examiner's decision, follow steps 1 through 4 of 4.2(b), above, and file the papers (1-5 of 4.1(c), above).

- e. Counsel must make proper service on the SORB of the papers filed in superior court in compliance with Mass.R.C.P. 4 and 5.

4.3 The Hearing on Motion for Stay of Registration and Dissemination

Counsel should familiarize herself with the training materials on Motions for Stay, and insure that all possible bases for the motion are asserted and argued.

4.4 Obtaining a Transcript and Copy of the Record

- a. If counsel has not already requested a copy of the transcript of the SORB hearing pursuant to 803 CMR 1.24 (see 4.2(b)(2), above), she should do so immediately.
- b. Counsel should carefully review the transcript and correct any errors using the procedure outlined in 803 CMR 1.24(3).
- c. Counsel should contact the SORB attorney to make sure that counsel is sent a copy of the complete record in the case at the same time that it is filed with the superior court.

4.5 Filing and Arguing Motion for Judgment on the Pleadings

- a. Counsel should carefully review the entire record and identify issues specific to the client's case that are appealable.
- b. Counsel should prepare a Motion for Judgment on the Pleadings and a Memorandum in Support thereof. The memorandum should address, at a minimum, the following:
 - 1. Statement of the Case;
 - 2. Statement of the Facts;
 - 3. If no expert evidence was presented by SORB at the evidentiary hearing, an argument that the SORB has failed to meet its burden of proof.
 - 4. Where appropriate, an argument that the hearing examiner has:
 - a. not considered certain pertinent factors;
 - b. has considered factors for which there is little if any evidentiary support in the literature;
 - c. has considered factors not specified by the SORB;
 - d. has not given sufficient weight to certain factors;
 - e. has given excessive weight to certain factors;and has thereby committed errors of law, abused his discretion, acted arbitrarily or capriciously, or drawn conclusions against the substantial weight of the evidence.
 - 5. An argument preserving the client's state and federal constitutional rights.
- c. Counsel should review the memorandum and motion with the client.
- d. Counsel should file the motion and memorandum and serve a copy on the SORB in compliance with the rules of civil procedure. The motion and memorandum must be filed within 30 days of the filing of the record. Superior Court Standing Order 1-96.

- e. Counsel should fully argue all bases for appeal that are laid out in the Motion and Memorandum for Judgment on the Pleadings.

V. PRESERVING THE CLIENT’S RIGHT TO APPEAL TO THE APPEALS COURT

5.1 Deciding Whether to Appeal to the Appeals Court

Counsel must discuss with the client whether or not he wants to appeal the decision of the superior court to the appeals court. Except in extraordinary circumstances, counsel should advise a client who has been classified as a level 3 after an appeal to the superior court to appeal the classification decision. In general, counsel should advise a client to appeal a level 2 classification if that does not represent a reduction in the classification given to the client by the SORB hearing examiner.

5.2 Transferring the Case to CPCS for Appeal to the Appeals Court

- a. Counsel must file a Notice of Appeal with the Superior Court within 60 days of the entry of the court’s judgment. M.R.A.P. 3, 4. Counsel must serve a copy of this notice on the SORB attorney.
- b. Counsel should immediately notify the CPCS Assignment Coordinator by fax (617-988-8455) that an appeal will be taken. Counsel should include the client’s name, address, and the docket number of the superior court case in the fax.
- c. If oral argument on the Motion for Judgment on the Pleadings addressed any issues that were not raised in the filed papers, or if other events that occurred at oral argument are pertinent to the appeal, counsel should, within 10 days of filing the Notice of Appeal, order from the court reporter a transcript of the argument of the Motion for Judgment on the Pleadings, pursuant to M.R.A.P. 8(b)(1). Counsel should file with the superior court, pursuant to G.L. c. 261, § 27B, a supplementary affidavit and request that the SORB pay for preparation of the transcript. A copy of the transcript order and the supplementary affidavit must be served on the SORB attorney.
- d. If it is counsel’s judgment that a transcript of the oral argument is not needed for appeal, counsel must, within 10 days of the filing of the Notice of Appeal, file in the Superior Court clerk’s office a letter indicating that she does not intend to order a transcript of the proceedings. A copy of this letter must be served on the SORB attorney. M.R.A.P. 8(b)(1).
- e. If counsel has ordered a transcript as described above in 5.2 (c), counsel must, within 40 days of filing the notice of appeal, either file the transcript with the superior court clerk or provide the clerk with a signed statement that she has ordered the transcript from the court reporter. M.R.A.P. 9(c)(2).
- f. Shortly after completing (c) or (d), above, counsel should receive notice from the Superior Court that the record has been assembled. Within 10 days of receiving this notice, counsel must file in the Appeals Court a motion to waive the Appeals Court filing fee, together with client’s Affidavit of Indigency (this Affidavit of Indigency must be on a particular form which is available from the Appeals Court Clerk’s Office). If the Affidavit of Indigency cannot be completed and filed within the 10 days, the motion to waive the filing fee should be filed together with a motion for leave to late file the affidavit of indigency. M.R.A.P. 10(a)(1).

g. If the motion to waive the filing fee is allowed, counsel must send a letter to the clerk of the Appeals Court, requesting that the appeal be entered on the docket. M.R.A.P. 10(a)(1).

h. When counsel receives notice from the Appeals Court that the case has been entered on the Appeals Court docket, counsel must immediately mail a SORB appeal referral form (available from the SORB Assignment Coordinator) to the SORB Assignment Coordinator at CPCS. Counsel should mail, along with the referral form, the following documents:

1. the SORB hearing examiner decision;
2. the Superior Court decision on the Motion for Judgment on the Pleadings;
3. the Notice of Appeal;
4. all papers received from or filed in the Superior Court or the Appeals Court related to the appeal.

Because appellate counsel's brief will be due 40 days after the entry of the case on the Appeals Court docket, counsel must send these materials to CPCS immediately.

i. Counsel must file in the Superior Court a Motion to Withdraw and for Appointment of Substitute Counsel.

5.3 Informing Client of His Right to Move for Reclassification

Counsel should inform her client that he has a right, pursuant to 803 CMR 1.37C, to file a written motion with the SORB requesting reclassification, three years after his initial classification has become final. Counsel should advise the client that he can seek counsel to assist with the preparation and filing of this motion by contacting the CPCS SORB Assignment Coordinator after three years have passed.